

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
GEORGE C. TURNER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 81-177

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from an order relinquishing the irrigation portion of ground water certificate No. 1079-A and issuing a superceding certificate for domestic supply, came before the Pollution Control Hearings Board, David Akana (presiding) and Gayle Rothrock, at a formal hearing in Spokane on March 17, 1982.

Appellant was represented by his attorney, Lawrence L. Tracy; respondent was represented by Robert E. Mack, Assistant Attorney General. The proceeding was tape recorded.

Having heard the testimony, having examined the exhibits, and

1 having considered the contention of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Ground water certificate 1079-A was issued on June 12, 1951, to
5 Forbes S. Driggs with a priority date of May 28, 1948, under the
6 provisions of RCW 90.44.080. The certificate of water right
7 authorizes the withdrawal of 800 gallons per minute and 320 acre feet
8 per year for the irrigation of 80 acres and for domestic supply. The
9 well is located 1302 feet west and 50 feet north from the east quarter
10 corner, being within the southeast quarter of the northeast quarter of
11 Section 24, Township 19, Range 28 E.W.M. The place of use for the
12 water is the east half of the northeast quarter of Section 24,
13 Township 19, Range 28 E.W.M., Grant County, Washington.

14 Appellant, Mr. Turner, is a farmer in the area and, since 1974, is
15 the owner of the property described in the ground water certificate.

16 II

17 The land described in the certificate is located within Farm Unit
18 91, Irrigation Block 41 of the Columbia Basin Project, and since
19 approximately 1952, according to United States Bureau of Reclamation
20 records, the lands authorized as a place of use under the above
21 certificate have been receiving water from the East Columbia Basin
22 Irrigation District.

23 Water supplies from the project are subject to reduction due to
24 low flow or drought. Appellant has used combinations of other farm
25 unit water allocations from other farmlands to provide himself with

1 sufficient water for irrigation on all his lands. If appellant cannot
2 obtain adequate project water, he would resort to using his well.

3 III

4 There is a 12 inch diameter well drilled to a depth of 350 feet at
5 the authorized location. The well is presently equipped with a 1.5
6 BHP Berkeley Pump and provides domestic water to the Turner house
7 located approximately 100 feet northeast of the well. Numerous rusty
8 12-inch valve and pipe parts can be found in a junk pile near the pump
9 house. A 12-inch pipeline exists at land surface, extending from near
10 the pump house to the east at least 2000 feet, crossing under a county
11 road. The pipeline is in a state of total disrepair, is rusted, and
12 has large sections cut out and removed, leaving a discontinuous
13 pipeline. This pipeline served lands other than above described.

14 The well pipes and fittings apparently were used by the U & I
15 Sugar Company for its purposes at least until 1973.

16 IV

17 The well is not equipped with a pump of sufficient capacity to
18 exercise the full extent of the water right certificate. There is no
19 distribution system installed on the property which can transport
20 irrigation water to the land upon which it is to be used.

21 V

22 Appellant Turner was notified by respondent, on August 11, 1981,
23 that because of nonuse, the irrigation portion of the right should be
24 relinquished. In response, Mr. Turner cited the standby reserve water
25 supply of RCW 90.14.140 as the basis for not voluntarily relinquishing
26 the irrigation portion of the right.

1 VI

2 Based upon its investigations and upon information provided by Mr.
3 Turner, respondent concluded that the well was being used for domestic
4 supply but had not been used for irrigation purposes for at least five
5 consecutive years subsequent to the effective date of chapter 90.14
6 RCW.

7 Respondent then determined that the irrigation portion of the
8 certificate reverted to the state. The irrigation portion of the
9 certificate was declared relinquished and a superceding certificate
10 was to be issued for domestic supply. The decision was appealed to
11 this Board.

12 VII

13 Mr. Turner testified that he has available to the well a 75
14 horsepower pump and sufficient mainline which is ready to be
15 immediately installed if it is ever needed for use in the well.
16 Further, Mr. Turner testified that it would only take 24 hours to
17 install the pump and set the mainline and have it running.
18 Electricity is available at the site for the operation of an
19 irrigation pump. The well itself is apparently in good condition.

20 VIII

21 Mr. Turner has kept as many as 400 head of cattle on the property
22 during several months of each year. The well is used to supply
23 stockwater.

24 IX

25 Mr. Turner, as a farmer, has raised seed alfalfa and other seed

1 crops on other property where rill irrigation is used. Seed crops
2 take approximately four acre-feet per acre to irrigate on a rill
3 irrigation basis, and there is insufficient water on the instant unit,
4 without the use of the well, to irrigate that type of crop.

5 X

6 The zoning and comprehensive plan designates the area for single
7 family residences at a density of one residence per acre. Mr. Turner
8 testified that he has always intended to develop the property into
9 single family residences when business conditions are better in the
10 future.

11 XI

12 Any Conclusion of Law which should be deemed a Finding of Fact is
13 hereby adopted as such.

14 From these Findings the Board enters these

15 CONCLUSIONS OF LAW

16 I

17 This matter involves the application of RCW 90.14.140 to avoid the
18 relinquishment of a portion of a water right certificate for nonuse
19 under chapter 90.14 RCW. Respondent has shown by clear and convincing
20 evidence, that the irrigation water right in question has not been
21 used for at least five consecutive years. The parties have focused on
22 two subsections of RCW 90.14.140 and have submitted the issues thus
23 drawn for determination.

24 RCW 90.14.140 provides in part:

25 Notwithstanding any other provision of this chapter,

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 81-177

there shall be no relinquishment of any water right.

(2) If such right is used for a standby or reserve water supply to be used in time of drought or other low flow period so long as withdrawal or diversion facilities are maintained in good operating condition for the use of such reserve or standby water supply, or

(3) If such right is claimed for a determined future development to take place either within fifteen years of the effective date of this act, or the most recent beneficial use of the water right, whichever date is later....

II

Appellant submitted sufficient facts without objection as would allow us to evaluate his claim under RCW 90.14.140(3).

There is no evidence of a "determined future development" by appellant. "Determine" means "to come to an end." Black's Law Dictionary 536 (4th Ed. 1968). It is defined in Webster's Third New International Dictionary 616 (1971) as "to fix conclusively or authoritatively." Appellant testified about his plans to raise seed alfalfa, develop one acre single family residences, and/or use the water supply in time of drought or low flow period to continue irrigation. These intended plans are inconsistent with each other and are subject to change. They cannot amount to meeting the criteria of a "determined future development" as contemplated under RCW 90.14.140(3).

III

Appellant's authorized beneficial use of water is specified for domestic and irrigation uses. These specified uses do not include

1 industrial and stockwatering uses; they may include single and group
2 domestic uses. Cf. RCW 90.03.290; RCW 90.54.020; .120; RCW 90.14.031;
3 RCW 90.44.050.

4 IV

5 Aside from the exercise of the single domestic right, there has
6 been no authorized use of the right for five consecutive years. The
7 evidence shows that appellant can withdraw water within a reasonably
8 short time period if the occasion became necessary. The well is
9 apparently in good condition, an irrigation pump is available, and
10 equipment can be available to distribute the water to the place of
11 use. The "facility" is apparently available and in good operating
12 condition although it has not operated in recent years.

13 That portion of the right which has not been exercised within the
14 prescribed time period, and which is not exempted under RCW 90.14.140
15 should be relinquished. The only rights that are not subject to
16 relinquishment are the standby or reserve water use for irrigation and
17 the domestic use.

18 This result is consistent with the purpose of chapter 90.14 RCW to
19 return to the state any water rights which are no longer exercised.
20 RCW 90.14.010 and .020. The water that appellant has not used over
21 the years should be made available for those who would use it.

22 V

23 Order DE 81-595 should be remanded to respondent to provide for
24 relinquishment of the irrigation portion of the water right except for
25
26

1 a standby or reserve water supply under such circumstances as
2 respondent may prescribe. In all other respects, the order should be
3 affirmed.

4 VI

5 Any Finding of Fact which should be deemed a Conclusion of Law is
6 hereby adopted as such.

7 From these Conclusions the Board enters this

8 ORDER

9 Order DE 81-595 is remanded to provide for a standby or reserve
10 water supply exception. The decision is affirmed in all other
11 respects.

12 DATED this 4th day of May, 1982.

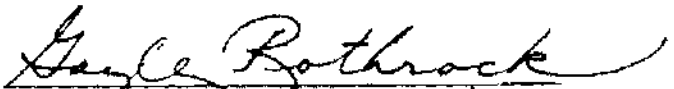
13 POLLUTION CONTROL HEARINGS BOARD

14 

15 DAVID AKANA, Lawyer Member

16
17 Did Not Participate

18 NAT W. WASHINGTON, Chairman

19
20 

21 GAYLE ROTHROCK, Vice Chairman